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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,130	01/07/2002	Clifford A. Pickover	YOR920010296US1	2408
28062	7590	03/30/2006	EXAMINER	
BUCKLEY, MASCHOFF, TALWALKAR LLC 5 ELM STREET NEW CANAAN, CT 06840			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3627	
DATE MAILED: 03/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/041,130

Applicant(s)

PICKOVER ET AL.

Examiner

Ronald Laneau

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 26-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Response to Amendment

1. The amendment filed on 01/23/06 has been entered. Claims 24 and 25 are canceled and claims 1-23 and 26-52 are now pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-23 and 26-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAuliffe (US 2003/0004798) in view of Haynes et al (US 2002/0161661 A1).

As per claims 1-11, 13-17, 23, 26-41 and 43-51, McAuliffe discloses a method for online shopping (electronic commerce), including the steps of: associating an online shopping cart with a consumer (page 11, [0007], lines 1-8); consumer selects the items to place in the shopping cart and consumer is associated to the shopping cart); and associating an item with the online shopping cart (page 3, [0024], lines 8-12); items are stored in the shopping cart and are therefore associated to the shopping cart). McAuliffe does not disclose a method wherein the associated item was not selected by the consumer for association with the shopping card but Haynes discloses a method wherein the second item was not selected by the consumer for association with the shopping cart (upon selection of primary item, the server associates a second item that is linked to said primary item), and wherein the second item must be disassociated from the

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shopping cart to purchase the first item without purchasing the second item (page 1, [0011]; server removes second or secondary item from the shopping cart upon removal of primary item of if user decides not to get secondary item).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the removal of the secondary item by the server as taught by Haynes into the system of McAuliffe because it would conveniently manage and update a shopping cart as an on-line customer adds, changes, and deletes item from the shopping cart (page 1, [0001]).

As per claim 2, McAuliffe discloses a method wherein the item is associated with the shopping cart based on at least one of: a shopping history of the consumer (page 4, [0038], lines 10-13).

As per claim 3, McAuliffe discloses a method further comprising: determining to associate the item with the online shopping cart based on a first item associated with the shopping cart (page 1, [0008], lines 14-16).

As per claim 4, McAuliffe discloses a method wherein the item is complementary to the first item (page 1, [0007], lines 11-13).

As per claim 5, McAuliffe discloses a method wherein the item is a substitute for the first item (page 1, [0007], lines 14-17)

As per claim 6, McAuliffe discloses a method comprising: determining to associate the item with the online shopping cart based on a characteristic of items previously associated with the shopping cart (page 1, [0007], lines 14-17).

As per claim 7, McAuliffe discloses a method wherein the characteristic comprises at least a type of one or more of the items (page 3, [0029], lines 6-8).

As per claim 8, McAuliffe discloses a method including the step of determining to associate the item with the online shopping cart based on a characteristic (behavior) of the consumer (page 3, [0029], lines 9-10).

As per claim 9, McAuliffe discloses a method wherein the characteristic comprises at least one shopping history (page 4, [0038], lines 11-14).

As per claim 10, McAuliffe discloses a method wherein a cost of the associated item is less than a retail cost that would be charged to the consumer for the item if the item was selected by the consumer for association with the shopping cart (page 3, [0025], lines 11-13).

As per claims 11 and 13-17, McAuliffe discloses a method wherein merchants determine the price of the item being offered for sale i.e. less than a retail cost). McAuliffe discloses a charge for associating an item into the shopping cart for consumers to purchase i.e. the cost of the associated item must be free as claimed. Furthermore, McAuliffe discloses a method further comprising: receiving an instruction from the consumer to disassociate a second item from the shopping cart; and in response to the instruction, automatically disassociating the item from the shopping cart (page 1, [0009], lines 3-12; upon consumer's return of item, enticement is altered to disassociate the second item from the shopping cart); comprising: presenting terms (financing term) for purchasing the item to the consumer (page 3, [0029], lines 16-19); further comprising determining the association based on rules (page 2, [0012], lines 3-7); comprising: dynamically updating the rules (page 3, [0025], lines 18-20); further comprising: notifying the consumer that the item was associated with the shopping cart (page 5, [0041], lines 8-14);

As per claims 12 and 22, McAuliffe does not disclose that a method wherein an item cannot be disassociated from the shopping cart but Haynes discloses a system Haynes et al (US 2002/0161661 A1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the removal of the secondary item by the server as taught by Haynes into the system of McAuliffe for the same reasons given in claim 1.

As per claim 18, 19 and 21, McAuliffe discloses a method for online shopping (electronic commerce), comprising: associating an online shopping cart with a consumer (page 11, [0007], lines 1-8); and associating an item with the online shopping cart (page 3, [0024], lines 8-12) in response to a selection of the item by an entity other than the consumer (page 1, [0007], lines 10-13; entity = merchant = seller); wherein the entity is a potential seller (merchant) of the item (potential seller = merchant); wherein a cost of the associated item is less than a retail cost that would be charged to the consumer for the item if the item was selected by the consumer for association with the shopping cart (page 3, [0025], lines 11-13; merchants determine the price of the item being offered for sale i.e. less than a retail cost). Furthermore, McAuliffe discloses a method further comprising: receiving an instruction from the consumer to disassociate a second item from the shopping cart; and in response to the instruction, automatically disassociating the item from the shopping cart (page 1, [0009], lines 3-12; upon consumer's return of item, enticement is altered to disassociate the second item from the shopping cart).

As per claims 43-51, McAuliffe discloses an apparatus for electronic shopping (electronic commerce), comprising: a processor (fig. 2, engine 210); and a storage device in communication with the processor and storing instructions adapted to be executed by the processor (page 3,

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[0027], lines 6-10) to: associate an online shopping cart with a consumer (page 11, [0007], lines 1-8); and associate an item with the online shopping cart (page 3, [0024], lines 8-12), wherein the associated item was not selected by the consumer for association with the shopping cart (page 1, [0007], lines 10-13; the system provides consumer with an opportunity to buy additional items that were not selected with an enticement). McAuliffe further discloses a method wherein the item is associated with the shopping cart based on at least one of: a shopping history of the consumer (page 4, [0038], lines 10-13); a method further comprising: determining to associate the item with the online shopping cart based on a first item associated with the shopping cart Page 1, [0008], lines 14-16), wherein the item is complementary to the first item (page 1, [0007], lines 11-13); wherein the item is a substitute for the first item (page 1, [0007], lines 14-17); wherein a cost of the associated item is less than a retail cost that would be charged to the consumer for the item if the item was selected by the consumer for association with the shopping cart (page 3, [0025], lines 11-13; merchants determine the price of the item being offered for sale i.e. less than a retail cost); wherein the entity is a potential seller of the item (potential seller = merchant). McAuliffe does not disclose a charge for associating an item into the shopping cart for consumers to purchase, it is clear that the cost of the associated item must be free as claimed.

4. Claims 20, 42 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAuliffe (US 2003/0004798) in view of Haynes et al (US 2002/0161661 A1) and further in view of Batachia et al (US 2002/0116349).

As per claims 20, 42 and 52, McAuliffe does disclose an intelligent buyer agent 290 in fig. 2) but does not disclose a merchant or an entity other than the consumer using an intelligent

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agent but Batachia is used to show that the concept of utilizing an intelligent between the consumers and the merchants is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic recommendations of items in the shopping cart s taught by Haynes into the system of McAuliffe because it would improve customization of the online store by adding features such as additional items into the shopping cart. And it would have been obvious to one of ordinary skill in the art to utilize the intelligent agent as taught by Batachia into the combined systems of McAuliffe and Haynes because it would improve the negotiation capability between consumers and merchants and also enable to operate reliably, efficiently and profitably on behalf of their clients (merchants or consumers).

Response to Arguments

5. Applicant's arguments filed on 01/23/06 have been fully considered but they are not persuasive.

Applicant argues that McAuliffe and Henson fails to disclose or suggest "associating a first item and a second item with a shopping cart, wherein the second item must be disassociated from the shopping cart to purchase the first item without purchasing the second item." In response to Applicant's arguments, the system of both McAuliffe and Henson would allow a consumer to remove item not needed from a shopping cart. Furthermore, the newly added reference (Haynes) discloses such limitations (see rejection above). Applicant further argues that McAuliffe and Henson fails to disclose or suggest "associating, by an entity other than a consumer, a second item with an online shopping cart in response to a selection of a first item by

the consumer.” In response to Applicant’s arguments, Haynes is used to disclose a second item that is placed in the shopping cart by the server in response to the consumer adding a first item in the shopping cart. Applicant’s arguments have been overcome, claims 1-23 and 26-52 are finally rejected.

Conclusion

6. Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

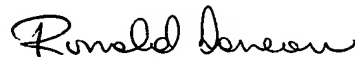
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ronald Laneau
Examiner
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